

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 19-10447-RGS

UNITED STATES

|
V

JAMES DE LA CRUZ

AFFIDAVIT OF COUNSEL

Andrew W Piltser Cowan deposes and states the following under the pains and penalties of perjury:

1. I am counsel to the Defendant in this matter. I was retained shortly after the Defendant's arrest and represented him in the initial detention hearing.
2. When I drafted the previous motions for the Defendant's release based on the COVID-19 pandemic, I did not mention any particular risk factors because I was not aware of any. I knew that the Defendant had sleep apnea, but based on the literature available to me at the time, I did not believe that was a risk factor that I could argue in good faith merited special consideration with regard to his release from custody.
3. On March 26, 2020, I was discussing the Court's latest order denying the Defendant's release with his family. His sister Scarlett then informed me that Mr. De La Cruz suffers from asthma.
4. After further discussion with Mr. De La Cruz and his family, I obtained Mr. De La Cruz' medical records from New York City Health + Hospitals / Harlem Hospital. Harlem Hospital sent me over 160 pages of medical records detailing six ER visits for asthma attacks in the past 5 years. Each visit was rated as an Emergency Severity Index 3. I

learned from internet research that this is a 5-point scale used by ER staff to indicate the level of urgency of ER cases, with level 1 representing patients who need immediate, life-saving intervention, and level 5 representing the least-urgent cases. The records also indicated that Mr. De La Cruz has “moderate” asthma, which is within the range of severity indicated by the CDC as high risk for COVID-19.

5. On Friday, April 3, I learned from Mary Ann Dakkak, MD MSPH, that obstructive sleep apnea is also a serious risk factor for COVID-19. Dr. Dakkak has not evaluated or treated the Defendant but was able to supply an affidavit based on the current science and her clinical experience treating COVID-19 patients at the Boston Medical Center.
6. On the afternoon of Friday, April 3, I received the pretrial services investigation report pursuant to General Order 20-9. After reviewing that report, I believe that I was aware of Mr. De La Cruz’ asthma at a previous time, however, my understanding prior to the COVID-19 pandemic was that asthma was a nuisance illness that was unlikely to be a significant challenge in a correctional setting, and therefore unlikely to be of major significance to my work.

Subscribed and sworn to under the pains and penalties of perjury this 6th day of April, 2020

/s/ Andrew W Piltser Cowan